

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

UNITED STATES OF AMERICA,

Plaintiff,

v.

**MARK CLARKE and
DAVID CLARKE,**

Defendants.

No. 08-30170-DRH

ORDER

HERNDON, Chief Judge:

Pending before the Court is the Government's January 9, 2012 motion to continue trial as to Mark Clarke and David Clarke (Doc. 533). The government moves to continue the trial as one co-defendant, Sandra Clarke, remains a fugitive and her whereabouts are unknown. Further, the government also moves to continue the trial as Mark Clarke and David Clarke pleaded guilty to an Information in case 11-CR-30152-DRH and are scheduled to be sentenced on January 27, 2012 and February 24, 2012, respectively. The motion also states that after the Court sentences Mark Clarke and David Clarke in 11-CR-30152-DRH, the government will move to dismiss them as defendants from this case.


Clearly, the Court finds that under the circumstances a continuance is warranted. Pursuant to 18 U.S.C. § 3161(h)(3)(A), the Court **GRANTS** the motion to continue as to defendants Mark Clarke and David Clarke (Doc. 533). The Court **CONTINUES** the jury trial scheduled for January 23, 2012 to Monday, March 12,

2012 at 9:00 a.m.

As noted in previous Orders, co-defendant Sandra Clarke still remains a fugitive and has not been arraigned. Because the Speedy Trial clock does not begin to run until the last co-defendant is arraigned, the 70-day window for conducting this trial has not yet come into play under the Speedy Trial Act. *See United States v. Larson*, 417 F.3d 741, 745 n.1(7th Cir. 2005)(“In the typical joint trial, the Speedy Trial clock begins when the last co-defendant is arraigned.”)(citing *United States v. Baskin-Bey*, 45 F.3d 200, 203 (7th Cir. 1995); *Henderson v. United States*, 476 U.S. 321, 323 n.2 (1986)). Thus, there is no need to account for excluded time due to trial delays, such as when a trial is continued. Further, once Sandra Clarke is arraigned, the Court will set her case for trial.

IT IS SO ORDERED.

Signed this 10th day of January, 2012.

 David R. Herndon
2012.01.10
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**Chief Judge
United States District Court**